

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1626 OF 1996

Shri Y.J.Patki, proprietor of
M/s.Patki & Dadarkar, Chartered
Architects, having his office at
Feltham House,
1st floor, J.N.Heredia Marg,
Bellard Estate, Bombay-400 038.

Petitioner

vs.

1. Shri Prabhakar G.Kolhatkar,
8, Panch Pandav Housing Society,
Jan Wadi, Pune - 411 016.
2. Shri B.M.Khodade, Presiding
Officer incharge, 3rd Labour Court,
Pune, Sadashiv Peth, Pune.

Respondents

Mr.R.S.Pai with Mr.Sanjay Udeshi for the petitioner.

Mr.Sanjay Kshirsagar for the respondent no.1.

CORAM : B.H. MARLAPALLE,J.

DATED : 25th August 2005

ORAL JUDGMENT:.

Being aggrieved by the order passed by the learned Judge of the Labour Court at Pune dated 6th December 1995 allowing an application filed under section 33-C(2) of the Industrial Disputes Act, 1947, this petition has been filed by the employer. By the impugned order the petitioner has been directed to pay a sum of Rs.76,692/- to the applicant-the present respondent by way of notice pay, retrenchment compensation and bonus. While admitting this petition, stay was granted to the

operation of the order subject to deposit of Rs.50,000/- with the Labour Court and the said amount was allowed to be withdrawn by furnishing security to the satisfaction of the Labour Court. It was further clarified that in case the amount deposited was not withdrawn, it shall be invested in a fixed deposit with the Nationalised Bank. When the petition was first taken up for final hearing on 21st July 2005 it was informed for the first time that the respondent-employee is no more. Time was sought to bring his legal representatives on record as the impugned order is a money decree. Mr.Kshirsagar, the learned counsel for the respondent-employee stated that inspite of a telegram having been sent to the son of the respondent-employee, he did not receive any response and, therefore, the petition was heard on merits.

2. In the application filed under section 33-C(2) of the Industrial Disputes Act by the respondent-employee after he was terminated from service with effect from 31st July 1988 he claimed the following money recoveries:

(a) Notice pay

one months wages as required

under section 25 F of I.D.Act.

Rs. 2,500.00

(b) Retrenchment compensation

under section 25-F

of I.D.Act.

Rs.20,192.30

and

(c) Bonus since 1975 for

every year at the rate of

20% till August 1988.

Rs.54,000.00

Total:

Rs.76,692.00

. The applicant-employee had claimed that the termination order dated 29th June 1988 amounted to retrenchment and, therefore, he was entitled for retrenchment compensation under section 25-F of the I.D.Act. He further claimed that he was not paid bonus and, therefore, he sought recovery for the entire period of the service right from 1975 onwards.

3. The employer filed written statement before the Labour Court and contested the claim. Challenge to the jurisdiction of the Labour Court for entertaining the

application was also raised on the ground that the applicant was not a workman within the meaning of section 2(s) of the I.D.Act. It was further submitted that the provisions of Section 25-F would not be applicable in the instant case and he had no right to claim bonus. The employer further submitted that an application under section 33-C(2) of the I.D.Act would be entertained in respect of the monetary claims which shall be recognised by law and the applicant was being paid a retainerhip fees from March 1983 till August 1989 when he was discontinued.

4. The applicant had stepped into the witness box in support of his claim, whereas Mr.Yeshwant J. Patki, the proprietor of the petitioner-firm deposed for opposing the claim. As per the depositions of the applicant, his last drawn monthly salary was Rs.2500/-. In respect of the nature of his duties he deposed as under:

" It was my duty to get done work from the contractor as per the maps and drawings and the specifications provided by the Architects.. Nobody was junior to me on any site. My duties was supervisory whenever there was any fault. I was taking the measurement personally the work done by the employees of the contractor. I was preparing the bill as per the work done, by the contractor and the quantity surveyor of the opponent firm was checking and was sanctioning the said bill. It was my responsibility to have a check whether the construction work at the site is going on as per the specifications given by the opponent firm. It was necessary for me to attend the

site every day. Also I was consulting with the Engineers of the Garware company and the contractor and was deciding the line of action. It is true that if the work was not done as per the specifications given by the opponent firm, then it was my responsibility to call the Engineer of the contractor and to get done the work as specified by the opponent firm. It is true that, whenever there was a fault or any crack then it was my responsibility to correct the same by consulting with the Engineer of the contractor. It is true that, at Pune, on the site where I was working no other employee of the opponent firm was working. It is true that, the contractor were appointing their own employee, for the execution of the construction work. It is true that, there were independent supervisors of the contractor to supervise the employees of the contractor. It is true that, the Engineers of the contractor were supervising over the work of their supervisor. It is true that, I was not at all concerned with the employees and the supervisors of the contractor, but I was concerned with the Engineers of the contractor."

5. The Labour Court, on the basis of the above evidence, held that the applicant was a workman as defined under Section 2(s) of the I.D.Act. This finding is untenable. Section 2(s) of the I.D.Act reads as under:

"(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied and of the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence

of, that dispute, or whose dismissal,
discharge or retrenchment has led to
that dispute, but does not include any
such person -

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

The learned counsel for the petitioner rightly relied upon a recent decision in the case of Management of Sonapat Co-operative Sugar Mills Ltd. vs. Ajit Singh, JT 2005(2) SC 370. In paragraph 36 of the decision in the case of H.R. Adyanthya & ors. v. Sandoz (India) Ltd. & ors., A.I.R.1994 SC 2608, the Constitution Bench stated thus-

"36. A 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947 must not only establish that he is not covered by the provisions of the Apprentices Act but must further establish that he is employed in the establishment for the purpose of doing any work contemplated in the definition."

. The nature of duties of the applicant as stated by him in the witness box did show that he was neither working in a clerical, technical work nor he was doing any manual or unskilled work. He, therefore, did not fall within the ambit of the term "workman" as defined under Section 2(s) of the I.D.Act. The application made by him under Section 32-C(2) of the Act was therefore not tenable and the Labour Court was required to dismiss the application on this preliminary point of jurisdiction itself.

6. So far as the payment of bonus is concerned, the applicant himself in his oral depositions admitted before the Labour Court that he had not claimed the bonus in writing from 1975 till the date of termination. He did not establish his right under the Payment of Bonus Act for receiving bonus at the rate of 20% or any other less quantum. In the case of Municipal Corporation of Delhi v. Ganesh Razak & anr., 1995(1) SCC 235, a three Judge Bench held, inter alia, that the very basis of the claim or the entitlement of the workman to certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33-C(2) of the Act. The Labour Court has no

jurisdiction to first decide the workman's entitlement and proceed to compute the benefit so adjudicated on that basis in exercise of its power under the same section. It is only when the entitlement has been earlier adjudicated or recognised by the employer and thereafter for the purpose of implementation or enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under the said section like that of the Executing Court's power to interpret the decree for the purpose of its execution.

7. In the premises, the impugned order suffers from manifest errors and the application filed by the respondent-employee was entertained without jurisdiction by the Labour Court. The petition must, therefore, succeed and the same is hereby allowed. The impugned order is quashed and set aside. Rule is discharged but without any order as to costs.

(B.H. MARLAPALLE,J.)